

market value of the property on the date of the sale exceeds the proceeds of the sale. The principles used in determining the value at which an item of property is included in the gross estate shall be followed in arriving at the fair market value of the property for purposes of this paragraph. See §§ 20.2031-1 through 20.2031-9.

(3) Expenses incurred in defending the estate against claims described in section 2053(a)(3) are deductible to the extent permitted by § 20.2053-1 if the expenses are incurred incident to the assertion of defenses to the claim available under the applicable law, even if the estate ultimately does not prevail. For purposes of this paragraph (d)(3), “expenses incurred in defending the estate against claims” include costs relating to the arbitration and mediation of contested issues, costs associated with defending the estate against claims (whether or not enforceable), and costs associated with reaching a negotiated settlement of the issues.

(e) *Effective/applicability date.* This section applies to the estates of decedents dying on or after October 20, 2009.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6826, 30 FR 7708, June 15, 1965; 44 FR 23525, Apr. 20, 1979; T.D. 9468, 74 FR 53660, Oct. 20, 2009]

**§ 20.2053-4 Deduction for claims against the estate.**

(a) *In general*—(1) *General rule.* For purposes of this section, liabilities imposed by law or arising out of contracts or torts are deductible if they meet the applicable requirements set forth in § 20.2053-1 and this section. To be deductible, a claim against a decedent's estate must represent a personal obligation of the decedent existing at the time of the decedent's death. Except as otherwise provided in paragraphs (b) and (c) of this section and to the extent permitted by § 20.2053-1, the amounts that may be deducted as claims against a decedent's estate are limited to the amounts of bona fide claims that are enforceable against the decedent's estate (and are not unenforceable when paid) and claims that—

(i) Are actually paid by the estate in satisfaction of the claim; or

(ii) Meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts.

(2) *Effect of post-death events.* Events occurring after the date of a decedent's death shall be considered in determining whether and to what extent a deduction is allowable under section 2053. See § 20.2053-1(d)(2).

(b) *Exception for claims and counterclaims in related matter*—(1) *General rule.* If a decedent's gross estate includes one or more claims or causes of action and there are one or more claims against the decedent's estate in the same or a substantially-related matter, or, if a decedent's gross estate includes a particular asset and there are one or more claims against the decedent's estate integrally related to that particular asset, the executor may deduct on the estate's United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) the current value of the claim or claims against the estate, even though payment has not been made, provided that—

(i) Each such claim against the estate otherwise satisfies the applicable requirements set forth in § 20.2053-1;

(ii) Each such claim against the estate represents a personal obligation of the decedent existing at the time of the decedent's death;

(iii) Each such claim is enforceable against the decedent's estate (and is not unenforceable when paid);

(iv) The value of each such claim against the estate is determined from a “qualified appraisal” performed by a “qualified appraiser” within the meaning of section 170 of the Internal Revenue Code and the corresponding regulations;

(v) The value of each such claim against the estate is subject to adjustment for post-death events; and

(vi) The aggregate value of the related claims or assets included in the decedent's gross estate exceeds 10 percent of the decedent's gross estate.

(2) *Limitation on deduction.* The deduction under this paragraph (b) is limited to the value of the related claims or particular assets included in decedent's gross estate.

(3) *Effect of post-death events.* If, under this paragraph (b), a deduction is claimed on Form 706 for a claim

against the estate and, during the period described in § 20.2053-1(d)(2), the claim is paid or meets the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts, the claimed deduction is subject to adjustment to reflect, and may not exceed, the amount paid on the claim or the amount meeting the requirements of § 20.2053-1(d)(4). If, under this paragraph (b), a deduction is claimed on Form 706 for a claim against the estate and, during the period described in § 20.2053-1(d)(2), the claim remains unpaid (and does not meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts), the claimed deduction is subject to adjustment to reflect, and may not exceed, the current valuation of the claim. A valuation of the claim will be considered current if it reflects events occurring after the decedent's death. With regard to any amount in excess of the amount deductible under this paragraph (b), an estate may preserve the estate's right to claim a refund for claims that are paid or that meet the requirements of § 20.2053-1(d)(4) after the expiration of the period of limitation for filing a claim for refund by filing a protective claim for refund in accordance with the rules in § 20.2053-1(d)(5).

(c) *Exception for claims totaling not more than \$500,000*—(1) *General rule.* An executor may deduct on Form 706 the current value of one or more claims against the estate even though payment has not been made on the claim or claims to the extent that—

(i) Each such claim against the estate otherwise satisfies the applicable requirements for deductibility set forth in § 20.2053-1;

(ii) Each such claim against the estate represents a personal obligation of the decedent existing at the time of the decedent's death;

(iii) Each such claim is enforceable against the decedent's estate (and is not unenforceable when paid);

(iv) The value of each such claim against the estate is determined from a "qualified appraisal" performed by a "qualified appraiser" within the meaning of section 170 of the Internal Revenue Code and the corresponding regulations;

(v) The total amount deducted by the estate under this paragraph (c) does not exceed \$500,000;

(vi) The full value of each claim, rather than just a portion of that amount, must be deductible under this paragraph (c) and, for this purpose, the full value of each such claim is deemed to be the unpaid amount of that claim that is not deductible after the application of §§ 20.2053-1 and 20.2053-4(b); and

(vii) The value of each claim deducted under this paragraph (c) is subject to adjustment for post-death events.

(2) *Effect of post-death events.* If, under this paragraph (c), a deduction is claimed for a claim against the estate and, during the period described in § 20.2053-1(d)(2), the claim is paid or meets the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts, the amount of the allowable deduction for that claim is subject to adjustment to reflect, and may not exceed, the amount paid on the claim or the amount meeting the requirements of § 20.2053-1(d)(4). If, under this paragraph (c), a deduction is claimed for a claim against the estate and, during the period described in § 20.2053-1(d)(2), the claim remains unpaid (and does not meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts), the amount of the allowable deduction for that claim is subject to adjustment to reflect, and may not exceed, the current value of the claim. The value of the claim will be considered current if it reflects events occurring after the decedent's death. To claim a deduction for amounts in excess of the amount deductible under this paragraph (c), the estate may preserve the estate's right to claim a refund for claims that are not paid or that do not meet the requirements of § 20.2053-1(d)(4) until after the expiration of the period of limitation for the filing of a claim for refund by filing a protective claim for refund in accordance with the rules in § 20.2053-1(d)(5).

(3) *Examples.* The following examples illustrate the application of this paragraph (c). Assume that the value of each claim is determined from a "qualified appraisal" performed by a "qualified appraiser" and reflects

events occurring after the death of the decedent (D). Also assume that each claim represents a personal obligation of D that existed at D's death, that each claim is enforceable against the decedent's estate (and is not unenforceable when paid), and that each claim otherwise satisfies the requirements for deductibility of § 20.2053-1.

(d) *Special rules*—(1) *Potential and unmatured claims*. Except as provided in § 20.2053-1(d)(4) and in paragraphs (b) and (c) of this section, no estate tax deduction may be taken for a claim against the decedent's estate while it remains a potential or unmatured claim. Claims that later mature may be deducted (to the extent permitted by § 20.2053-1) in connection with a timely claim for refund. To preserve the estate's right to claim a refund for claims that mature and become deductible after the expiration of the period of limitation for filing a claim for refund, a protective claim for refund may be filed in accordance with § 20.2053-1(d)(5). See § 20.2053-1(b)(3) for rules relating to the treatment of court decrees and settlements.

(2) *Contested claims*. Except as provided in paragraphs (b) and (c) of this section, no estate tax deduction may be taken for a claim against the decedent's estate to the extent the estate is contesting the decedent's liability. Contested claims that later mature may be deducted (to the extent permitted by § 20.2053-1) in connection with a claim for refund filed within the time prescribed in section 6511(a). To preserve the estate's right to claim a refund for claims that mature and become deductible after the expiration of the period of limitation for filing a claim for refund, a protective claim for refund may be filed in accordance with § 20.2053-1(d)(5). See § 20.2053-1(b)(3) for rules relating to the treatment of court decrees and settlements.

(3) *Claims against multiple parties*. If the decedent or the decedent's estate is one of two or more parties against whom the claim is being asserted, the estate may deduct only the portion of the total claim due from and paid by the estate, reduced by the total of any reimbursement received from another party, insurance, or otherwise. The estate's deductible portion also will be

reduced by the contribution or other amount the estate could have collected from another party or an insurer but which the estate declines or fails to attempt to collect. See further § 20.2053-1(d)(3).

(4) *Unenforceable claims*. Claims that are unenforceable prior to or at the decedent's death are not deductible, even if they are actually paid. Claims that become unenforceable during the administration of the estate are not deductible to the extent that they are paid (or will be paid) after they become unenforceable. However, see § 20.2053-1(b)(3)(iv) regarding a claim whose enforceability is at issue.

(5) *Claims founded upon a promise*. Except with regard to pledges or subscriptions (see § 20.2053-5), section 2053(c)(1)(A) provides that the deduction for a claim founded upon a promise or agreement is limited to the extent that the promise or agreement was bona fide and in exchange for adequate and full consideration in money or money's worth; that is, the promise or agreement must have been bargained for at arm's length and the price must have been an adequate and full equivalent reducible to a money value.

(6) *Recurring payments*—(i) *Noncontingent obligations*. If a decedent is obligated to make recurring payments on an enforceable and certain claim that satisfies the requirements for deductibility under this section and the payments are not subject to a contingency, the amount of the claim will be deemed ascertainable with reasonable certainty for purposes of the rule for deducting certain ascertainable amounts set forth in § 20.2053-1(d)(4). If the recurring payments will be paid, a deduction will be allowed under the rule for deducting certain ascertainable amounts set forth in § 20.2053-1(d)(4) (subject to any applicable limitations in § 20.2053-1). Recurring payments for purposes of this section exclude those payments made in connection with a mortgage or indebtedness described in and governed by § 20.2053-7. If a decedent's obligation to make a recurring payment is contingent on the death or remarriage of the claimant and otherwise satisfies the requirements of this paragraph (d)(6)(i), the

amount of the claim (measured according to actuarial principles, using factors set forth in the transfer tax regulations or otherwise provided by the IRS) will be deemed ascertainable with reasonable certainty for purposes of the rule for deducting certain ascertainable amounts set forth in § 20.2053-1(d)(4).

(ii) *Contingent obligations.* If a decedent has a recurring obligation to pay an enforceable and certain claim but the decedent's obligation is subject to a contingency or is not otherwise described in paragraph (d)(6)(i) of this section, the amount of the claim is not ascertainable with reasonable certainty for purposes of the rule for deducting certain ascertainable amounts set forth in § 20.2053-1(d)(4). Accordingly, the amount deductible is limited to amounts actually paid by the estate in satisfaction of the claim in accordance with § 20.2053-1(d)(1) (subject to any applicable limitations in § 20.2053-1).

(iii) *Purchase of commercial annuity to satisfy recurring obligation to pay.* If a decedent has a recurring obligation (whether or not contingent) to pay an enforceable and certain claim and the estate purchases a commercial annuity from an unrelated dealer in commercial annuities in an arm's-length transaction to satisfy the obligation, the amount deductible by the estate (subject to any applicable limitations in § 20.2053-1) is the sum of—

(A) The amount paid for the commercial annuity, to the extent that the amount paid is not refunded, or expected to be refunded, to the estate;

(B) Any amount actually paid to the claimant by the estate prior to the purchase of the commercial annuity; and

(C) Any amount actually paid to the claimant by the estate in excess of the annuity amount as is necessary to satisfy the recurring obligation.

(7) *Examples.* The following examples illustrate the application of paragraph (d) of this section. Except as is otherwise provided in the examples, assume—

(i) A claim satisfies the applicable requirements set forth in § 20.2053-1 and paragraph (a) of this section, is payable from property subject to claims, and the amount of the claim is not subject

to any other applicable limitations in § 20.2053-1;

(ii) A claim is not deductible under paragraphs (b) or (c) of this section as an exception to the general rule contained in paragraph (a) of this section; and

(iii) The claimant (C) is not a family member, related entity or beneficiary of the estate of decedent (D) and is not the executor (E).

*Example 1. Contested claim, single defendant, no decision.* D is sued by C for \$100x in a tort proceeding and responds asserting affirmative defenses available to D under applicable local law. D dies and E is substituted as defendant in the suit. D's Form 706 is due before a judgment is reached in the case. D's gross estate exceeds \$100x. E may not take a deduction on Form 706 for the claim against the estate. However, E may claim a deduction under § 20.2053-3(c) or § 20.2053-3(d)(3) for expenses incurred in defending the estate against the claim if the expenses have been paid in accordance with § 20.2053-1(d)(1) or if the expenses meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts. E may file a protective claim for refund before the expiration of the period of limitation prescribed in section 6511(a) in order to preserve the estate's right to claim a refund, if the amount of the claim will not be paid or cannot be ascertained with reasonable certainty by the expiration of this limitation period. If payment is subsequently made pursuant to a court decision or a settlement, the payment, as well as expenses incurred incident to the claim and not previously deducted, may be deducted and relief may be sought in connection with a timely-filed claim for refund.

*Example 2. Contested claim, single defendant, final court decree and payment.* The facts are the same as in *Example 1* except that, before the Form 706 is timely filed, the court enters a decision in favor of C, no timely appeal is filed, and payment is made. E may claim a deduction on Form 706 for the amount paid in satisfaction of the claim against the estate pursuant to the final decision of the local court, including any interest accrued prior to D's death. In addition, E may claim a deduction under § 20.2053-3(c) or § 20.2053-3(d)(3) for expenses incurred in defending the estate against the claim and in processing payment of the claim if the expenses have been paid in accordance with § 20.2053-1(d)(1) or if the expenses meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts.

*Example 3. Contested claim, single defendant, settlement and payment.* The facts are the same as in *Example 1* except that a settlement is reached between E and C for \$80x and payment is made before Form 706 is timely

filed. E may claim a deduction on Form 706 for the amount paid to C (\$80x) in satisfaction of the claim against the estate. In addition, E may claim a deduction under § 20.2053-3(c) or § 20.2053-3(d)(3) for expenses incurred in defending the estate, reaching a settlement, and processing payment of the claim if the expenses have been paid in accordance with § 20.2053-1(d)(1) or if the expenses meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts.

*Example 4. Contested claim, multiple defendants.* The facts are the same as in *Example 1* except that the suit filed by C lists D and an unrelated third-party (K) as defendants. If the claim against the estate is not resolved prior to the time the Form 706 is filed, E may not take a deduction for the claim on Form 706. If payment is subsequently made of D's share of the claim pursuant to a court decision holding D liable for 40 percent of the amount due and K liable for 60 percent of the amount due, then E may claim a deduction for the amount paid in satisfaction of the claim against the estate representing D's share of the liability as assigned by the court decree (\$40x), plus any interest on that share accrued prior to D's death. If the court decision finds D and K jointly and severally liable for the entire \$100x and D's estate pays the entire \$100x but could have reasonably collected \$50x from K in reimbursement, E may claim a deduction of \$50x together with the interest on \$50x accrued prior to D's death. In both instances, E also may claim a deduction under § 20.2053-3(c) or § 20.2053-3(d)(3) for expenses incurred and not previously deducted in defending the estate against the claim and processing payment of the amount due from D if the expenses have been paid in accordance with § 20.2053-1(d)(1) or if the expenses meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts.

*Example 5. Contested claim, multiple defendants, settlement and payment.* The facts are the same as in *Example 1* except that the suit filed by C lists D and an unrelated third-party (K) as defendants. D's estate settles with C for \$10x and payment is made before Form 706 is timely filed. E may take a deduction on Form 706 for the amount paid to C (\$10x) in satisfaction of the claim against the estate. In addition, E may claim a deduction under § 20.2053-3(c) or § 20.2053-3(d)(3) for expenses incurred in defending the estate, reaching a settlement, and processing payment of the claim if the expenses have been paid in accordance with § 20.2053-1(d)(1) or if the expenses meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts.

*Example 6. Mixed claims.* During life, D contracts with C to perform specific work on D's home for \$75x. Under the contract, additional work must be approved in advance by D. C

performs additional work and sues D for \$100x for work completed including the \$75x agreed to in the contract. D dies and D's Form 706 is due before a judgment is reached in the case. E accepts liability of \$75x but contests liability of \$25x. E may take a deduction of \$75x on Form 706 if the amount has been paid or meets the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts. In addition, E may claim a deduction under § 20.2053-3(c) or § 20.2053-3(d)(3) for expenses incurred in defending the estate against the claim if the expenses have been paid or if the expenses meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts. E may file a protective claim for refund before the expiration of the period of limitation prescribed in section 6511(a) in order to preserve the estate's right to claim a refund for any amount in excess of \$75x that is subsequently paid to resolve the claim against the estate. To the extent that any unpaid expenses incurred in defending the estate against the claim are not deducted as an ascertainable amount pursuant to § 20.2053-1(d)(4), they may be included in the protective claim for refund.

*Example 7. Claim having issue of enforceability.* D is sued by C for \$100x in a tort proceeding in which there is an issue as to whether the claim is barred by the applicable period of limitations. After D's death but prior to the decision of the court, a settlement meeting the requirements of § 20.2053-1(b)(3)(iv) is reached between E and C in the amount of \$50x. E pays C this amount before the Form 706 is timely filed. E may take a deduction on Form 706 for the amount paid to C (\$50x) in satisfaction of the claim. If, subsequent to E's payment to C, facts develop to indicate that the claim was, in fact, unenforceable, the deduction will not be denied provided the enforceability of the claim was at issue in a bona dispute at the time of the payment. See § 20.2053-1(b)(3)(iv). A deduction may be available under § 20.2053-3(d)(3) for expenses incurred in defending the estate, reaching a settlement, and processing payment of the claim if the expenses have been paid in accordance with § 20.2053-1(d)(1) or if the expenses meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts.

*Example 8. Noncontingent and recurring obligation to pay, binding on estate.* D's property settlement agreement incident to D's divorce, signed three years prior to D's death, obligates D or D's estate to pay to S, D's former spouse, \$20x per year until S's death or remarriage. Prior to D's death, D made payments in accordance with the agreement and, after D's death, E continues to make the payments in accordance with the agreement. D's obligation to pay S under the property settlement agreement is deemed to

be a claim against the estate that is ascertainable with reasonable certainty for purposes of § 20.2053-1(d)(4). To the extent the obligation to make the recurring payment is a claim that will be paid, E may deduct the amount of the claim (measured according to actuarial principles, using factors set forth in the transfer tax regulations or otherwise provided by the IRS) under the rule for deducting certain ascertainable amounts set forth in § 20.2053-1(d)(4).

*Example 9. Recurring obligation to pay, estate purchases a commercial annuity in satisfaction.* D's settlement agreement with T, the claimant in a suit against D, signed three years prior to D's death, obligates D or D's estate to pay to T \$20x per year for 10 years, provided that T does not reveal the details of the claim or of the settlement during that period. D dies in Year 1. In Year 2, D's estate purchases a commercial annuity from an unrelated issuer of commercial annuities, XYZ, to fund the obligation to T. E may deduct the entire amount paid to XYZ to obtain the annuity, even though the obligation to T was contingent.

(e) *Interest on claim*—(1) Subject to any applicable limitations in § 20.2053-1, the interest on a deductible claim is itself deductible as a claim under section 2053 to the extent of the amount of interest accrued at the decedent's death (even if the executor elects the alternate valuation method under section 2032), but only to the extent of the amount of interest actually paid or meeting the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts.

(2) Post-death accrued interest may be deductible in appropriate circumstances either as an estate tax administration expense under section 2053 or as an income tax deduction.

(f) *Effective/applicability date.* This section applies to the estates of decedents dying on or after October 20, 2009.

[T.D. 9468, 74 FR 53660, Oct. 20, 2009, as amended at T.D. 9468, 74 FR 61525, Nov. 25, 2009]

#### § 20.2053-5 Deductions for charitable, etc., pledges or subscriptions.

(a) A pledge or a subscription, evidenced by a promissory note or otherwise, even though enforceable against the estate, is deductible (subject to any applicable limitations in § 20.2053-1) only to the extent that—

(1) Liability therefor was contracted bona fide and for an adequate and full

consideration in cash or its equivalent, or

(2) It would have constituted an allowable deduction under section 2055 (relating to charitable, etc., deductions) if it had been a bequest.

(b) *Effective/applicability date.* This section applies to the estates of decedents dying on or after October 20, 2009.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended at T.D. 9468, 74 FR 53664, Oct. 20, 2009]

#### § 20.2053-6 Deduction for taxes.

(a) *In general*—(1) Taxes are deductible in computing a decedent's gross estate—

(i) Only as claims against the estate (except to the extent that excise taxes may be allowable as administration expenses);

(ii) Only to the extent not disallowed by section 2053(c)(1)(B) and this section; and

(iii) Subject to any applicable limitations in § 20.2053-1.

(2) See §§ 20.2053-9 and 20.2053-10 with respect to the deduction allowed for certain state and foreign death taxes.

(b) *Property taxes.* Property taxes are not deductible unless they accrued before the decedent's death. However, they are not deductible merely because they have accrued in an accounting sense. Property taxes in order to be deductible must be an enforceable obligation of the decedent at the time of his death.

(c) *Death taxes*—(1) For the estates of decedents dying on or before December 31, 2004, no estate, succession, legacy or inheritance tax payable by reason of the decedent's death is deductible, except as provided in §§ 20.2053-9 and 20.2053-10 with respect to certain state and foreign death taxes on transfers for charitable, etc., uses. However, see sections 2011 and 2014 and the corresponding regulations with respect to credits for death taxes.

(2) For the estates of decedents dying after December 31, 2004, see section 2058 to determine the deductibility of state death taxes.

(d) *Gift taxes.* Unpaid gift taxes on gifts made by a decedent before his death are deductible. If a gift is considered as made one-half by the decedent